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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047013
Party	Defendant Internet FX, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,064,820

Mark: NETTRAK

Registered: March 7, 2006

NeTrack, Inc.,)	Cancellation No. 92047013
)	
Petitioner,)	
)	REGISTRANT'S MOTION TO SUSPEND
v.)	
)	
Internet FX, Inc.,)	
)	
Registrant.)	
)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

INTRODUCTION

In accordance with Trademark Rule 2.117(c), Registrant Internet FX, Inc. ("Registrant") hereby moves the Board for an order suspending this proceeding ("Motion to Suspend") until the Board has an opportunity to consider and decide Registrant's Motion to Re-Open Discovery and Reset Trial Periods filed September 25, 2008 ("Motion to Re-Open Discovery"). Good cause for granting this short suspension exists because it will avoid (1) duplicative efforts by the parties to prepare evidence and to file motions to strike evidence during the parties' respective testimony periods and Petitioner NetTrack, Inc.'s ("Petitioner") rebuttal period and (2) premature and/or unnecessary review by the Board of the parties' notices of reliance for procedural objections in the event that Registrant's Motion to Re-Open Discovery is granted. Registrant's Motion to Suspend is made for the further reason that its recently filed Motion to Re-Open Discovery is critical to the preparation of Registrant's case for trial.

BACKGROUND

On August 28, 2008, the Board issued its Order granting Registrant's November 30, 2007 Motion to Withdraw its earlier Motion to Re-Open Discovery, noting that Registrant had a right

to submit a new motion to reopen discovery. (*See* August 28, 2008 Order at 3 n.1) Further, the Board granted Petitioner's December 30, 2007 Motion to Reset Testimony Periods, with the 30-day period for plaintiff's testimony to close on November 1, 2008. (*Id.* at 6.)

After conferring with Petitioner on settlement and a potential re-opening of the discovery period, on September 25, 2008, Registrant filed its Motion to Reopen Discovery Period and Reset Testimony and Trial Periods. On October 14, 2008, Petitioner filed its Motion to Strike certain evidence filed by Registrant in support of its Motion to Re-Open Discovery ("Motion to Strike") and, on October 15, 2008, Petitioner filed its Opposition to the Motion to Re-Open Discovery. On November 4, 2008, Registrant filed its Reply in support of its Motion to Re-Open Discovery as well as its Opposition to Petitioner's Motion to Strike.

While the parties are now in the midst of their testimony periods, the Board has not yet ruled on Registrant's Motion to Re-Open Discovery, although the parties have fully briefed the matter. Petitioner has filed ten Notices of Reliance, necessitating Registrant's filing of two motions to strike which go to the admissibility of a substantial portion of Petitioner's evidence. Registrant's testimony period closes on December 31, 2008 and Petitioner's rebuttal period closes on February 14, 2008.

ARGUMENT IN SUPPORT OF SUSPENSION

The Board has discretion to suspend a proceeding pursuant to Trademark Rule 2.117(c) based upon a showing of "good cause." Two significant motions are currently pending before the Board: (1) Registrant's Motion to Reopen Discovery and (2) Petitioner's Motion to Strike certain evidence in support of Registrant's Motion to Reopen, with the Motion to Re-Open Discovery having been fully briefed, and Petitioner's Reply (if any) in support of its Motion to Strike not yet being due.

If the Board grants Registrant's Motion to Reopen Discovery, such decision will have a far reaching impact on the evidence on which Registrant will be able to notice reliance upon during its testimony period. In the event discovery is re-opened, Registrant fully expects that it will be able to notice reliance on additional discovery, including written materials and deposition

testimony, obtained from Petitioner, which it has not been able to obtain up to this point. If this proceeding is not suspended but the discovery and testimony periods are subsequently re-opened, Registrant will be required to evaluate new evidence obtained through discovery and prepare new notices of reliance during a second testimony period. In these same circumstances, Petitioner will also be required to evaluate any new evidence during Registrant's second testimony period and file a second set of objections to Registrant's notices of reliance. A re-opening in the discovery period may also require the Petitioner to file a second round of rebuttal testimony, if any, based on Registrant's noticed evidence.

In summary, suspension by the Board only until the Board considers and decides upon Registrant's Motion to Reopen Discovery would eliminate duplicative and potentially prejudicial work by both parties during the testimony period, and reduce the Board's need to review the parties' respective objections to evidence. Suspension will allow an efficient resolution of this matter for the parties as well as a substantial potential reduction in resources that the Board must devote to this proceeding. Any resulting delay in the proceeding will be extremely short, and will amount to no more than the period required by the Board to take Registrant's Motion to Reopen Discovery under consideration.


CONCLUSION

For the forgoing reasons, Registrant respectfully requests that the Board suspend this proceeding pending its consideration and decision on Registrant's Motion to Re-Open Discovery.

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

Dated: November __, 2008

By: 

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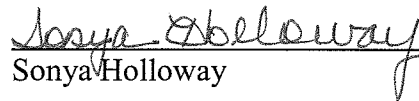
*Attorneys for Registrant
Internet FX, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REGISTRANT'S MOTION TO SUSPEND** has been served upon the Petitioner by depositing it with the United States Postal Service as first class mail, postage prepaid, in a sealed envelope addressed to:

Carl Oppedahl, Esq.
Oppedahl Patent Law Firm, LLC
P. O. Box 4850
Frisco, CO 80443-4850

on this 14th day of November, 2008.


Sonya Holloway

CERTIFICATE OF SERVICE